

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case NO.: 18-cr-80108-RLR**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LAWRENCE WEISBERG,

Defendant.

**DEFENDANT'S SENTENCING MEMORANDUM
AND REQUEST FOR A REASONABLE SENTENCE**

Defendant, **LAWRENCE WEISBERG** (“**Mr. Weisberg**”), by and through undersigned counsel, files his Sentencing Memorandum and moves this Court, pursuant to 18 U.S.C. § 3553(a), to impose a reasonable sentence, all facts and circumstances considered.

I. PROCEDURAL HISTORY

On May 29, 2018, Mr. Weisberg was charged, by Information, with one (1) count of engaging in a monetary transaction affecting interstate commerce, by, through, and to a financial institution, in criminally derived property of a value greater than \$10,000, that is, property derived from health care fraud in violation of 18 U.S.C. § 1957 (Count 1). (D.E. 1). On August 3, 2018, pursuant to a written plea agreement, Mr. Weisberg pled guilty to Count 1. (D.E. 20).

II. INTRODUCTION

Mr. Weisberg understands that he has been charged with, and pled guilty to, a serious offense. He has taken full responsibility for his actions and expects to be punished for his conduct. However, there are mitigating factors which Mr. Weisberg respectfully brings to this

Court's attention for its consideration when fashioning the appropriate sentence. Not only did Mr. Weisberg accept responsibility for his conduct in a timely manner, but he also provided significant assistance to authorities, has a long history of servicing his community through good deeds and charitable acts, and has strong family ties and responsibilities.

Further, Mr. Weisberg's punishment has, in a sense, already begun as he has lost his license to practice law in the State of Florida, experienced the complete deterioration of his reputation as a practicing attorney—which he has built over the last twenty-five (25) years, and faced the public shaming associated with the multiple news articles related to this case. In addition and most importantly, Mr. Weisberg will forever have to live with the pain, suffering, and embarrassment that he has brought to his wife and children. (PSR ¶ 64).

For the reasons stated infra, Mr. Weisberg respectfully submits that, based on the facts and circumstances of **his individual case** and in light of factors enumerated in 18 U.S.C. § 3553(a), the appropriate sentence here is below the advisory guideline range.

III. ADVISORY GUIDELINES CALCULATIONS

Mr. Weisberg and the Government agree, pursuant to U.S.S.G. § 2S1.1(a)(2), that the Base Level Offense in this case is sixteen (16). (D.E. 20 ¶ 7(b)). Mr. Weisberg and the Government also agree that his offense level should be increased by one (1) level, pursuant to U.S.S.G. § 2S1.1(b)(2)(A), because he was convicted under 18 U.S.C. § 1957. (D.E. 20 ¶ 7(c)). Thus, Mr. Weisberg has an adjusted offense level of seventeen (17). (PSR ¶ 70).

However, both parties agree that, when considering a two (2) level reduction based on Mr. Weisberg's timely acceptance of personal responsibility and an additional one (1) level reduction based on his substantial assistance to authorities pursuant to U.S.S.G. §§ 3E1.1(a) and 3E1.1(b), respectively, Mr. Weisberg's total offense level is fourteen (14). (PSR ¶ 65-74).

IV. REQUEST FOR REASONABLE SENTENCE

Mr. Weisberg respectfully moves this Court for a Downward Variance. Mr. Weisberg's Motion for Downward Variance is filed in good faith and based upon the unique facts and circumstances sub judice.

It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.

Gall v. United States, 128 S. Ct. 586, 598 (2007) (quoting Koon v. United States, 518 U.S. 81, 113 (1996)).

As this Court well knows, “[t]he Guidelines are not only *not mandatory* on sentencing courts; they are also not to be *presumed* reasonable.” Nelson v. United States, 555 U.S. 350, 352 (2009) (emphasis in original). Moreover, unless otherwise prohibited by law, Federal Courts “may consider, without limitation, any information concerning the background, character and conduct of [a] defendant.” U.S.S.G. § 1B1.4; see also 18 U.S.C. § 3661 (“No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.”).

18 U.S.C. § 3553(a) instructs the courts to impose sentences that are “sufficient, but not greater than necessary” to satisfy the purposes of sentencing set forth in § 3553(a)(2). According to Section 3553(a), “in determining the particular sentence to be imposed[,]” the Court shall consider:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—

- (A) reflects the seriousness of the offense, promotes respect for the law, and provides just punishment for the offense;
 - (B) provides adequate deterrence to criminal conduct;
 - (C) protects the public from future crimes of the defendant; and
 - (D) provides the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for—
- (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—
- * * * *
- (5) any pertinent policy statement—
- * * * *
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a)(1)-(7).

For the reasons stated infra, Mr. Weisberg respectfully asks this Court to focus on the principles pronounced by the United States Supreme Court and the factors set forth in 18 U.S.C. § 3553(a), and thereafter impose an appropriate sentence below the advisory guideline range.

A. Grounds for Downward Variance

1. Defendant's Extraordinary Cooperation and Acceptance of Responsibility

18 U.S.C. § 3553(e) provides:

Upon Motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.

U.S.S.G. §5K1.1 provides:

Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, the court may depart from the guidelines.

- a) The appropriate reduction shall be determined by the court for reasons stated that may include, but are not limited to, consideration of the following:
 - 1) the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;
 - 2) the truthfulness, completeness and reliability of any information or testimony provided by the defendant;
 - 3) the extent of the defendant's assistance;
 - 4) any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance;
 - 5) the timeliness of the defendant's assistance.

Mr. Weisberg has clearly demonstrated that he takes complete responsibility for his actions by, among other things, fully cooperating with the Government. Mr. Weisberg has been debriefed extensively on numerous occasions, each time providing valuable, material, and detailed information to the Government. Mr. Weisberg's assistance to the Government has been one hundred percent truthful, thorough, cogent, organized, and—most importantly—substantial. The exact nature and extent of Mr. Weisberg's cooperation will be discussed at his Sentencing Hearing.

Mr. Weisberg anticipates the Government filing a Motion for Downward Departure pursuant to the U.S.S.G. § 5K1.1. Considering Mr. Weisberg's **extraordinary** cooperation efforts, we respectfully ask the Court to fashion an appropriate downward variance pursuant to 18 U.S.C. § 3553(a). See United States v. Barner, 572 F.3d 1239, 1250 (11th Cir. 2009) ("Indeed, after Booker, a judge basing a sentence under the considerations outlined in 18 U.S.C. § 3553 may take a defendant's substantial assistance into account") (internal citations omitted).

2. Good Deeds and Public Service Contributions

Mr. Weisberg is mindful that under U.S.S.G. § 5H1.11, "[c]ivic, charitable, or public service; employment-related contributions; and similar prior good works are not ordinarily relevant in determining whether a departure is warranted." However, pursuant to 18 U.S.C. § 3553(a)(1), the District Court must consider "the history and characteristics of the defendant" when determining a reasonable sentence and, thus, may vary based upon the defendant's history of charitable acts. See United States v. Rouhani, 598 Fed. App'x 626, 631 (11th Cir. 2015) (affirming District Court's downward variance based upon the defendant's "history of trying to be a good citizen and doing good deeds."). Thus, Mr. Weisberg's extraordinary good character and charitable contributions can and should be considered by this Court during sentencing.

The following is a non-exhaustive list of Mr. Weisberg's charitable acts and good deeds:

1. Throughout his children's early years, Mr. Weisberg volunteered his time to coach their youth sports teams and organizations, including the City of Boca Raton and the Greater Beach and Park District Youth Basketball League, the West Boca Basketball League, Boca Hoops, I9 Sports Flag Football, the City of Boca Raton Youth Flag Football League, Boca Flag Football and Cheerleading, Sugar Sand City of Boca Raton Basketball League, West Boca Football League, Soccer Association of Boca Raton ("Sabr") Soccer, Boca Raton Youth Athletic Association ("BRYAA") Soccer, BRYAA Modified Coach Pitch Baseball, BRYAA Youth Baseball, and Boca Raton Little League Baseball League. Mr.

Weisberg also performed administrative tasks for many of the above-mentioned youth-sports organizations.

2. Since 2015, Mr. Weisberg and his family have volunteered every year, and intend on continuing to volunteer, at Pompey Park in Delray Beach on Thanksgiving day as part of the Keith Straghn Memorial Foundation, Inc. Thanksgiving Dinner program. As part of this event, Mr. Weisberg and his family dedicate several hours of their Thanksgiving day to prepare meals that go on to feed thousands of economically challenged people and families each year. Mr. Weisberg also uses this event as a teaching moment for his children regarding the importance of giving back to the community.
3. Mr. Weisberg has been involved with the George Snow Scholarship Fund, which helps individuals in South Florida who exhibit financial need achieve their goals through higher education. He and his wife have attended multiple “Boca Ballroom Battles,” which serve as fundraising events. Over the years, Mr. Weisberg has made substantial monetary donations in the range of several thousand dollars to the George Snow Scholarship Fund as well.
4. Mr. Weisberg has been involved with the Florence Fuller Child Development Center, which is a non-profit organization that provides aid to economically challenged families. He purchased seats and attended many events, including their annual “Wee Dream Ball.” Mr. Weisberg also had his children volunteer their time at the Florence Fuller Facility. Over the years, Mr. Weisberg has also donated funds to this cause.
5. Mr. Weisberg has been involved with the Orange Bowl Committee, which is a non-profit sports organization that promotes and serves the South Florida Community. Mr. Weisberg and his wife donated by attending the Orange Bowl Food and Wine Celebration that benefits the Make-A-Wish Foundation, the Special Olympics Florida, and the Orange Bowl Leadership Academy.
6. Mr. Weisberg has made monetary donations over the last fifteen (15) years to B’nai Torah Synagogue and the Jewish Federation.

Considering his lifetime commitment to charity and providing service to his community, Mr. Weisberg respectfully asks this Court to vary below the guideline range. See United States v. Thurston, 544 F.3d 22, 26 (1st Cir. 2008) (affirming a district court’s variance from five years imprisonment to three months imprisonment based on, inter alia, the defendant’s “charitable work, community service, generosity with time, and spiritual support and assistance to others”); United States v. Cooper, 394 F.3d 172 (3d Cir. 2005) (granting a four-level downward departure

and sentencing the defendant to probation); United States v. Serafini, 233 F.3d 758 (3d Cir. 2000) (granting a three-level downward departure for community and charitable services); United States v. Jones, 158 F.3d 492 (10th Cir. 1998) (departing downward three levels after considering the defendant's history of community service); United States v. Rioux, 97 F.3d 648, 663 (2nd Cir. 1996) (affirming the district court's downward departure based on charitable conduct); United States v. Canoy, 38 F.3d 893 (7th Cir. 1994) (finding that charitable and civic activities may provide a basis for departure); United States v. Greene, 249 F. Supp. 2d 262 (S.D.N.Y. 2003); United States v. Bennett, 9 F. Supp. 2d 513 (E.D. Pa. 1998) (departing from 232 months to 92 months based on the defendant's civic and charitable good deeds).

Mr. Weisberg respectfully suggests that his long history of community service and good deeds is exceptional and should be considered by this Court in fashioning the appropriate reasonable sentence.

3. Low Risk of Recidivism (18 U.S.C. § 3553(a)(2)(c))

18 U.S.C. 3553(a)(2)(C) provides that the District Court must consider the need to “protect the public from further crimes of the defendant[.]” As such, Mr. Weisberg respectfully asks this Court to vary downward from the advisory guidelines range due to his low risk of recidivism.

The United States Supreme Court has recognized that a defendant's likelihood to engage in future criminal conduct is a central factor that courts must assess when imposing a sentence. Pepper v. United States, 562 U.S. 476 (2011), (citing 18 U.S.C. §§ 3553(a)(2)(B)-(C)); Gall v. United States, 552 U.S. 38, 59 (2007) (“Gall's self-motivated rehabilitation . . . lends strong support to the conclusion that imprisonment was not necessary to deter Gall from engaging in future criminal conduct or to protect the public from his future criminal acts.”). Similarly, the

Eleventh Circuit has also considered a defendant's risk of recidivism "as a basis for a sentencing departure." See United States v. Jayyousi, 657 F.3d 1085, 1117 (11th Cir. 2011).

It is important to consider his age when determining the likelihood that Mr. Weisberg will commit crimes in the future because "numerous recidivism studies document . . . that older offenders are at lower risk for reoffending, and the [U.S. Sentencing] Commission's own research has confirmed this finding for federal offender populations." U.S.S.C., The Effects of Aging on Recidivism Among Federal Offenders, at 10, (December 2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf [hereinafter Effects of Aging on Recidivism]; see also United States v. Green, 2007 WL 869725, at *2 (S.D. Ohio Mar. 20, 2007) ("[D]istrict courts have routinely considered a defendant's age as part of their analysis on the grounds that older defendants exhibit markedly lower rates of recidivism compared to younger defendants[.]"). In addition, the Sentencing Commission's report also reveals that low criminal history measured by the Criminal History Category and higher level of education translates to lower risk of recidivism as well. See Effects of Aging on Recidivism at 30.

Here, Mr. Weisberg, a fifty-one (51) year-old with the lowest criminal history category of I, has a 6.2 % likelihood of reoffending. U.S.S.C., Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines, at 28 (May 2004), <http://www.ussc.gov/research/research-publications/measuring-recidivism-criminal-history-computation-federal-sentencing-guidelines>. To that end, because Mr. Weisberg has lived an otherwise law-abiding life, coupled with his strong family ties and high level of education, we respectfully submit that his true likelihood of recidivism is as close to zero (0) percent as an

individual can be, which warrants the consideration of a downward variance from the advisory guidelines.

4. Family Ties and Responsibilities (18 U.S.C. § 3553(a)(1))

Mr. Weisberg has been married to his wife, Barbra, for over twenty-three (23) years. (PSR ¶ 86). Together, they have nineteen (19) year-old twins, who currently attend two respected universities. (*Id.*). Like most families, Mr. Weisberg's has endured certain health issues but—fortunately—have survived. Mr. Weisberg has always tried to provide the best environment for his family. A father's responsibility to provide emotional and financial support for his family cannot be adequately reduced to words. According to his wife, who describes him as a “very active father, a great husband, and a great son[,]” Mr. Weisberg has done just that for the past nineteen (19) years. (*Id.*). Mr. Weisberg painfully acknowledges that he, and he alone, is responsible for the fact that his wife could be without the support of her husband, and his kids could be without the support of their father for a period of time. His own conduct has caused him to possibly forfeit this privilege.

18 U.S.C. § 3553(a)(1) states that the courts must consider “the nature and circumstances of the offense and the history and characteristics of the defendant[.]” Mr. Weisberg is mindful that, in requesting his **variance**, “family ties and responsibilities are not ordinarily relevant in determining whether a **departure** may be warranted.” U.S.S.G. § 5H1.6 (emphasis added). Nevertheless, a District Court has discretion to grant a downward variance on this ground, because “[a]lthough [the application of] this factor is discouraged, it is not forbidden.” *United States v. Leon*, 341 F.3d 928, 931 (9th Cir 2003); *see also Rita v. United States*, 551 U.S. 338, 364-65 (Stevens, J., concurring) (stating that factors, including family ties or civic, charitable, or public service are “not ordinarily considered under the Guidelines . . . [but are] matters that § 3553(a) authorizes the sentencing judge to consider”); *United States v. Artega*, 713 Fed. App'x 933, 936 (11th Cir. 2017) (affirming the

district court downward variance based on the defendant's "personal and family" circumstances); United States v. Baez-Arrogo, 553 F. App'x 922, 923 n.1 (11th Cir. 2014) (noting that the district court granted a "nine-month downward variance because of his family circumstances").

For these reasons, we respectfully suggest that the dependence of his two (2) children and his wife on Mr. Weisberg be considered with all the other factors raised herein, and taken into account when fashioning the appropriate sentence.

V. CONCLUSION

"In order to impose a reasonable sentence, this honorable Court should consider the factors of 18 U.S.C. § 3553 and the specific facts surrounding the instant case." United States v. Williams, 435 F.3d 1350, 1356 (11th Cir. 2006). This Court's sentencing Mr. Weisberg in the reasonable fashion requested is warranted. Justice will be fairly tempered by this Court's understanding and application of our judicial system's respect for mercy in an appropriate case. Without a doubt, considering the guidelines, this is the appropriate case.

WHEREFORE, Defendant, **LAWRENCE WEISBERG**, prays that this Honorable Court will impose the reasonable sentence “sufficient, but not greater than necessary” to achieve the goals enunciated in 18 U.S.C. § 3553(a).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 4, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

s/Brian H. Bieber
BRIAN H. BIEBER